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File No. City/45

Legal Department

A **BRANCH**

Subject:—

Opinions Under the

City of Bombay Municipal

Act 1888

P 2/F

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Submitted.

2 In view of the decision of the Bombay High Court in C.S.No. 182 of 1941(145 Bom.L.R.914)Govt. directed by G.R.G.D.No. 4893, dated 23-3-1944, that certain properties included in Schedule II to Kanga's Award for 1934-39 and 1939-44 are entitled to exemption from the payment of the general tax levied by the Bombay Municipality and that these properties should be deleted from future valuation statements. The Municipal Commr. in his letter dated 2.11. 1943 pointed out that some properties in Schedule II were not included in the Schedule annexed to the case, which in the opinion of the Municipality are not occupied for charitable purposes and are therefore not exempt from the payment of the general tax. The Municipal Commr. suggested that in case Govt. cannot accept this contention, it should agree to have the question of taxation of properties settled by arbitration. G.D. is of the view that in view of R.L.A.'s opinion No. 6112,dated 6-11-1936 the properties in question are exempt from taxation . G.D.however thinks that the proper course would be for Govt. to refuse to pay the tax on these properties and leave it to the Municipality to file a suit against Govt. instead of the question being settled by arbitration. The R.L.A. is requested to advise in the matter.

3 . The properties which were not included in the Schedule annexed to the special case are those mentioned at items 441, 449, 482, 483 and 484 in Schedule II to Mr. Kanga's award issued in 1934. They are mentioned below:-

Serial No. in the award	Description of Property
@@*	
441	European General Hospital
449	Northcote Police Hospital
482	Station Hospital with outbuil-dings and extension
483	Carnegy Lines Hospital.
484	Corrugated Iron sheds used as Military Hospital.

Serial Nos. 482,483 and 484 are in charge of commanding Royal Engineer; the last two have since been demolished and a new hospital called the Indian War Hospital' has been constructed. As regards serial No. 441 which is described as European General Hospital, the R.L.A. in para. 5 of his opinion No. 6112, dated 6-11-1936 has held that it is entitled to exemption from the payment of the tax under s. 143(1)(a) of the City of Bombay Municipal Act as a hospital open to the general public is for the relief of the poor and distressed and must be held to be a charitable institution. With regard to serial No. 449 and Nos. 482-484 the R.L.A. in para 7 of the opinion referred to above has held that the properties mentioned are exempt under the same section 143(1)(a) as establishment of hospitals for sick soldiers and the Police are for the benefit of substantial sections of the community and may be regarded as occupied for a charitable purposes. According to the decision of the High Court in Municipal Corporation of the City of Bombay v. Province of Bombay, 45 Bom. L.R.914, it is the purpose for which the building or land is occupied is the first important factor to be considered and once the building or land is held to be exclusively occupied for charitable purposes, it is immaterial who is the owner. In the present case all the properties are hospitals. They can therefore be said to be occupied for charitable purposes(cf, A.G.'s opinion No. 11 of 1938). Merely because these properties are not mentioned in the special case referred to the High Court, it cannot be said that the said buildings are not occupied for charitable purposes. If the Municipal Corporation persits inrefusing to recognise the claim of Govt. to exemption, there is no alternative but have the matter settled in a court of law. Govt. may therefore refuse to pay the tax and await the institution of the suit. The papers may be returned with the remarks; "Seen and returned.

2 The course proposed by G.D. in its office note dated 15-1-1945 at pages 29-31 is proper. Sd./P.S. Nawkami 30/1

S.A.S.

A may be the reply.

Id./T.K. 1/2

A.L.R.

I agree. Id./R.S.H. 5/2

R.L.A.

Id./P.N.M. 8/2/45

Office of the R.L.A.

Seen and returned

2 The course proposal by G.D. in its offic
note dated the 15th Jan. 1945 at pages
29-31 ante is proper.

Sd./P.N.Moos
R.L.A.

U.R. to G.D.No. 1236, dt. the 10th Feb. 1945.

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L.D.R.I.No. 10794/10-12-45

Submitted with reference to G.D.notes at pp. 91-99 ante.

2 As the existing building bye-laws of the Bombay Municipality. framed in 1919, are found in practice to be out of date and unsuitable to the modern building construction ideas, the Municipal Corporation has revised these bye-laws and has submitted them to Government for confirmation as req ired by section 463 of the City of Bombay Municipal Act, 1888. The revised bye-laws are framed under clauses (a),(c),(d) and (dd) af sec. 461 of the above Act. The existing bye-laws do not apply to Government buildings. However, to bring all the buildings in Bombay on one level, the Corporation has revised bye-law No. 3 to make the revised bye-law applicable to all building in Bombay including Government and Railway buildings. The B.B.& C.I. Rly., the G.I.P.Rly., and the Govt. of India on their behalf have objected to the framing of this revised bye-law as ultra vires on the ground that Govt. and Rly. buildings are protected by sec. 3 of the Government Buildings Act, 1899. The P.W.D. has also objected to the retention of this bye-law. The Municipal Commr. towhom the above position was pointed out, has insisted that the revised bye-law should be retained in order to maintain an even standard of health, sanitation and general planning of buildings in the Bombay City. The U.S.G.D. has thereupon observed that though it is obvious that the bye-law is ultra vires the position may be confirmed by a u.o. reference to the R.L.A. The R.L.A. is accordingly requested to advise whether the revised bye-law No. 3 of the Bombay

Its application to the Crown is further barred by the fact that a special enactment i.e. the Government Buildings Act, 1899 expressly provides that no such municipal enactment will apply to Government buildings. Consequently it appears that the proposed bye-law No. 3 is ultra vires so far as it brings Govt. and Rly., buildings within the purview of the Revised Buildings Bye-laws of the Bombay Municipality. The view taken by U.S., G.D. in paragraph 3 of his note at p. 98 ante appears to be correct.

Sd./... 14/2 P.A.

I agree.
By-law 3 of the Revised Municipal By-laws reads thus -

"No building whether in possession of His Majesty or the Municipal Corporation of the City of Bombay or of any other public or private body or employed or intended to be employed for the use of service of His Majesty or of the said Corporation or of any other public or private body shall be exempted from the operation of these by-laws except the following---

(a) any building erected and used, or intended to be erected and used exclusively for the purpose of plant-house, summar-house(not being a dwelling house), poultry house or aviary, which shall be wholly detached and at a distance of 10 ft. at the least from any other building;

(b) any building erected or intended to be erected by or with the sanction of the Commr. for use solely as a temporary hospital for the reception and treatment of persons suffering from any dangerous or infectious disease".

The question for R.L.A.'s consideration is whether the said by-law 3 in so far as it makes applicable to the Govt. buildings the by-law framed by the municipality is ultra vires.

The rule of law commonly stated is that "the Crown is not bound by a statute unless named in it. It has been said that the law is prima d facie presumed to be made for subjects only. At all events, the Crwon is not reached except by express words or by necessary implication inany case wher it would be ousted of an existing prerogative or interest. It is presumed that the Legislature does not intend to deprive the Crown of any prerogative, right or property, unless it expresses it s intention todo so inexplicit terms, or makes the inference irresistible"(p. 120 of Maxwell on Interpretation of Statutes). The provisions of "Building Regulations" contained inChapt. XII of the City of Bombay Municipal Act, 1888, do not expressly or by necessary implication bind the Crown, and this view reinstated by the recital in the preamble of the Govt. Buildings Act, 1899, that it is intended to provide for the exemption from the operation of municipal buildings laws of certain buildings and lands which are the property, or in the occupation, of the Government and situate within the limits of a Municipality".

Section 3 of the Govt. Buildings Act,1899, provides that nothing contained in any law or enactment for the time being in force to regulate the erection, re-erection, construction, alteration or maintenance of buildings within the limits of any Municipality shall apply to any building used or required for the public service or for any public purpose, which is the property, or in the occupation, of the Crown, or which

is to be erected onland whichis the pro. erty, or in the occupation, of the Crown. The proviso, however, provides that where the erection , re-erection, construction or material structural alteration of any building as aforesaid (not being a building connected with Imperial defence, or a building the plan or construction of which ought, in the opinion ofthe Govt. concerned, tobe treated as confidential or secret is contemplated, reasonable notice of the proposed work shall be given to the Municipal authority before it is commenced. Underaec. 4(1) the Municipal authority with the previous permission of, and subject to the restrictions or conditions of, the Provl.Govt., is empowered to inspect the land and building, and plans connectad withthe erecti/on; re-erection etc. and to submit a statement if any objections or suggestions which it may be deem fit to make with reference to such erection, re-erection etc. On considering such objections and suggestions, the Provl. Govt. shall pass orders thereon, and the building referred to therein shall be erected, re-erected etc. in accordance with such orders. The expression "Indian law" as defined in section 3(27a) of the General Clauses Act, 1897, includes any law, ordinance, ordor, by-law , rule or regulation passed or made at any time by any competent legislature, authority or person in British India. It thus includes also subordinate or delegated legislation like by-laws rules etc. Consequently in view of the provisions of section 3 of the Govt. Buildings Act, 1899, the by-laws framed by the Municipality under section 461 of the City of Bombay Municipal Act, 1888, regulating the erection, re-erection, construction, alteration or

maintenance of buildings within the Municipal limits shall not apply to any building used or required for the public services or for any public purpose which is the property,or in occupation of the Crown, or which is to be erected on land which is the property of the Crown. In so far as it is sought to make such by-laws applicable to the erection, re-erection ,construction, alteration or maintenance of the Govt. properties in the City of Bombay, by-law 3 is repugnant to the statutory provisions of section 3 of the Govt. Buildings Act, 1899, That being so, by-law 3 is ultra vires as being made not in pursuance of the authority conferred by section 461 of the City of Bombay Municipal Act, 1888, read with section 3 of the Govt. Buildings Act, 1888.

Id./.... 15/12

A.L.R.

I agree. By-law No 3 is clearly ultra-vires. The view taken by U.S.G.D. is correct. Papers may be seen and returned.

Id./.... 17/12

R.L.A.

Reply

X By-law no 3 is clearly ultra-vires.

The view taken by U. S.G.D. is correct. X

Id./... 17/12/45

U.R. to G.D.No. 9487, dated 18-12-1945.

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